

# **Exhibit 1**

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF TEXAS  
3 WACO DIVISION

4 HEALTH DISCOVERY ) Docket No. WA 22-CA-356 ADA  
5 CORPORATION )  
6 )  
7 vs. ) Waco, Texas  
8 )  
9 INTEL CORPORATION ) July 8, 2022

10 TRANSCRIPT OF MOTION HEARING VIA VIDEOCONFERENCE  
11 BEFORE THE HONORABLE DEREK T. GILLILAND  
12

13 APPEARANCES:

14 For the Plaintiff: Mr. William Flachsbart  
15 Mr. Mark Magas  
16 Dunlap, Bennett & Ludwig, PLLC  
17 333 North Michigan Avenue,  
18 Suite 2700  
19 Chicago, Illinois 60601  
20  
21 For the Defendant: Ms. Sarah E. Piepmeier  
22 Perkins Coie, LLP  
23 505 Howard Street, Suite 1000  
24 San Francisco, California 94105  
25  
26 Court Reporter: Ms. Lily Iva Reznik, CRR, RMR  
27 501 West 5th Street, Suite 4153  
28 Austin, Texas 78701  
29 (512) 391-8792

30 Proceedings reported by computerized stenography,  
31 transcript produced by computer-aided transcription.

09:34:55 1 THE COURT: Okay. Good morning, everybody.

09:34:56 2 We're here for a motions hearing on -- it's kind

09:35:01 3 of a unique motion on use of a new cause number or

09:35:07 4 relation back. So before we get started, let me have Ms.

09:35:09 5 Copp call the case.

09:35:11 6 THE CLERK: Yes, your Honor.

09:35:12 7 Calling Case No. WA 22-CV-356, styled, Health

09:35:18 8 Discovery Corporation vs. Intel Corporation. Called for a

09:35:20 9 motions hearing.

09:35:20 10 THE COURT: All right. And could I get

09:35:22 11 announcements starting with the plaintiff.

09:35:26 12 MR. FLACHSBART: Your Honor, William Flachsbart

09:35:28 13 on behalf of HDC, and with me today is Mark Magas.

09:35:32 14 THE COURT: Oh, we just lost your sound, Mr.

09:35:34 15 Flachsbart.

09:35:36 16 MR. FLACHSBART: Sorry. I'm trying to use only

09:35:42 17 one mic. With me today is Mr. Magas from our office who

09:35:46 18 will be doing the arguing.

09:35:48 19 THE COURT: Okay. Very good. Good morning, Mr.

09:35:50 20 Flachsbart, Mr. Magas.

09:35:52 21 Could I get announcements from the defendant.

09:35:53 22 MS. PIEPMEIER: Good morning, your Honor.

09:35:54 23 Sarah Piepmeier from Perkins Coie on behalf of

09:35:57 24 Defendant Intel Corporation. A few of my colleagues are

09:36:01 25 on the line, but most importantly, we have our

09:36:04 1 representative from intel Corporation, Jared Edgar, who is  
09:36:07 2 observing the proceedings. Thank you, your Honor.

09:36:10 3 THE COURT: All right. Very good. Well, good  
09:36:11 4 morning, Ms. Piepmeier, and, Mr. Edgar, and everybody else  
09:36:15 5 in attendance.

09:36:16 6 Before we start, one thing I want to just caution  
09:36:19 7 or warn everybody about is, there's a whole lot of  
09:36:22 8 construction going on around the courthouse, and we've  
09:36:24 9 lost power unexpectedly a couple of times this week. So  
09:36:27 10 if we are in the middle of something and we appear -- the  
09:36:33 11 Court appears to disappear, just hang tight and we'll  
09:36:37 12 reconnect as quick as we can. And I'm hopeful that by  
09:36:41 13 giving that warning, we won't need to worry about it, but  
09:36:44 14 we had to yesterday. So just hang tight if you lose us.

09:36:49 15 All right. So I've read the parties -- I've read  
09:36:54 16 the motions. Very interesting motion. My apologies for  
09:36:57 17 being a little late as I'd kind of gotten myself enmeshed  
09:37:03 18 in doing some Lexis and Westlaw research on it and looking  
09:37:08 19 over some of the case law. So I'll share you some quick  
09:37:14 20 thoughts and then, I'll let it -- I guess, Mr. Magas  
09:37:18 21 begin.

09:37:18 22 But my initial thought is that given Judge  
09:37:23 23 Albright's order in December of '21 that the claims in the  
09:37:28 24 captioned matter dismissed without prejudice, it seems as  
09:37:34 25 though under the federal rules at that point, the original

09:37:37 1 case was in the language of some of the cases I've read  
09:37:43 2 effectively a nullity; and so, the new case seems to have  
09:37:48 3 started just that, a new cause number, a new case to me.  
09:37:53 4 It seems not a whole lot different than if the party were  
09:37:55 5 to just voluntarily dismiss a case under Rule 41 and then,  
09:38:02 6 later, re-file the case. So -- in which that situation,  
09:38:09 7 you would get a new cause number, you'd get a new filing  
09:38:11 8 date.

09:38:12 9 So that's kind of what it's looking like to me,  
09:38:15 10 Mr. Magas. So I share that with you not to put you on  
09:38:19 11 your heels but to just kind of give you my thoughts in  
09:38:22 12 case you want to craft the argument or address specific  
09:38:26 13 issues related to that. And with that, I will turn it  
09:38:30 14 over to you to begin.

09:38:34 15 MR. MAGAS: Certainly, your Honor. Thank you.

09:38:36 16 This dispute is fundamentally about whether HDC's  
09:38:38 17 re-filed complaint should relate back to its original  
09:38:41 18 complaint. The complaint should relate back in our  
09:38:43 19 opinion because it is functionally an amended complaint.  
09:38:46 20 To address your Honor's point, at all times during these  
09:38:50 21 proceedings, the original case was still pending because  
09:38:53 22 we had appealed the motion to -- the dismissal. And this  
09:39:00 23 case is functionally an amended complaint because it  
09:39:03 24 involves the same underlying facts. There's the same  
09:39:06 25 parties, the same patents, and essentially the same

1 infringements and defenses. And Intel's notably silent  
2 about this in their briefs.

3 So because Judge Albright dismissed the case  
4 without prejudice and then, closed the case, this gave us  
5 guidance on how he wanted us to proceed that we could then  
6 re-file the case with sufficient facts, which we believe  
7 we've now alleged: and I think that's shown because Intel  
8 chose not to file a Rule 12(b) motion to dismiss the new  
9 complaint and simply filed its answer.

10 At the time Intel -- or HDC filed this new  
11 complaint, it had no reasonable options given the  
12 situation or given how the Judge ruled to file a formal  
13 amended complaint. But again, this is functionally an  
14 amended complaint. Intel relies on a narrow  
15 interpretation of Federal Rule of Civil Procedure 15(c),  
16 claiming that only a formal amended complaint may relate  
17 back. But Intel's argument is not based on any  
18 precedential case law and it runs counter to the purpose  
19 of the relation-back doctrine.

20 Fifth Circuit case law instructs that the Court  
21 should interpret Rule 15(c) liberally. And under this  
22 Court's guidance and, for example, Cornett vs. United  
23 Airlines, the key consideration in whether a complaint  
24 that arises out of the same facts should be -- should  
25 relate back is whether the defendant was properly on

09:55:49 1 essentially get a redo on a case that was, as I said,  
09:55:52 2 weeks away from expert reports and had a trial date.

09:55:55 3 So although I believe that this affects only the  
09:55:58 4 damages issue and not the schedule, I think that the  
09:56:00 5 decisions that HDC might make in proceeding and going  
09:56:04 6 forward affect the prejudice that I was speaking of.

09:56:06 7 THE COURT: Okay. All right. Let me give Mr. --  
09:56:12 8 oh, let me ask you, Ms. Piepmeier, as well, just on the  
09:56:16 9 idea of some supplemental briefing on this issue. Is that  
09:56:23 10 something you think would be beneficial? Does Intel have  
09:56:26 11 a position on that?

09:56:28 12 MS. PIEPMEIER: Your Honor, if that would be  
09:56:31 13 beneficial to the Court, we would be happy to do  
09:56:33 14 supplemental briefing. I'm not sure, to be honest, that  
09:56:37 15 it's necessary because -- well, your Honor may have found  
09:56:39 16 the perfect case, but as I read the cases, nothing really  
09:56:43 17 fits this box. And I haven't seen a situation where, you  
09:56:48 18 know, the equity part was quite so apparent. But we'd be  
09:56:52 19 happy to do that if that would be helpful to the Court.

09:56:56 20 THE COURT: Okay. Thank you, Ms. Piepmeier.  
09:56:57 21 Mr. Magas.

09:56:59 22 MR. MAGAS: Sure, your Honor, a few points.

09:57:02 23 So first of all, there really is not any  
09:57:05 24 prejudice to Intel, despite what they're claiming, because  
09:57:07 25 they always knew what HDC was claiming from the complaint

09:57:12 1 and the claims it was making for infringement. It's  
09:57:15 2 fundamentally not different claims. So Intel knew all  
09:57:19 3 along what was at issue here. And in terms of the balance  
09:57:25 4 of equities, ruling the other way on this would  
09:57:29 5 significantly prejudice HDC by removing those two years of  
09:57:34 6 damages.

09:57:36 7 And finally, the record below -- this is not a  
09:57:42 8 redo in any sense or -- forgive me, your Honor. HDC is  
09:57:49 9 allowed to redo the matter, but all the facts in the  
09:57:55 10 underlying -- in the initial case, the record is binding  
09:57:58 11 on HDC. So those -- the record would not be relitigated.  
09:58:03 12 But in an amended complaint, HDC was -- followed exactly  
09:58:07 13 what this court was looking for when it issued its  
09:58:10 14 extensive motion to dismiss where it had discussion on the  
09:58:14 15 101 issue and was seeking clarification on that, and  
09:58:17 16 that's what we provided with this functionally amended  
09:58:20 17 complaint.

09:58:24 18 If you have no more further questions, your  
09:58:27 19 Honor, thank you.

09:58:28 20 THE COURT: Yeah. Why did -- you know, looking  
09:58:32 21 at the original -- I'll call it a pleading. Just the  
09:58:38 22 request to use originating case number. I'm not even sure  
09:58:42 23 what kind of docket entry that was filed under, yeah,  
09:58:46 24 whether it was a motion or notice, but it's very sparse.

09:58:50 25 Why did y'all choose to do it that way rather



\* \* \* \* \*

UNITED STATES DISTRICT COURT )  
WESTERN DISTRICT OF TEXAS )

I, LILY I. REZNIK, Certified Realtime Reporter,  
Registered Merit Reporter, in my capacity as Official  
Court Reporter of the United States District Court,  
Western District of Texas, do certify that the foregoing  
is a correct transcript from the record of proceedings in  
the above-entitled matter.

I certify that the transcript fees and format comply  
with those prescribed by the Court and Judicial Conference  
of the United States.

WITNESS MY OFFICIAL HAND this the 15th day of July,  
2022.

*Lily Iva Reznik*

~~~~~  
LILY I. REZNIK, CRR, RMR  
Official Court Reporter  
United States District Court  
Austin Division  
501 West 5th Street,  
Suite 4153  
Austin, Texas 78701  
(512) 391-8792  
SOT Certification No. 4481  
Expires: 1-31-23